

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

V.

DARCARS OF NEW CARROLLTON,
INC.,

Defendant.

C.A. No. 07-_____
(Related Cases 97-1863, 05-15,
05-1222, 05-1671)

Judge Conti

Magistrate Judge Caiazza

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), for the recovery of response costs from the named defendant incurred by the United States in responding to releases or threatened releases of hazardous substances at or from the Breslube Penn Superfund Site (the "Breslube Penn Site") which is located in Moon Township, Allegheny County, Pennsylvania.

2. The United States also seeks a declaration of the defendant's liability for all unreimbursed future response costs to be incurred by the United States in connection with the Breslube Penn Site.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of and parties to this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

4. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b) and (c), because the releases or threatened releases of hazardous substances that give rise to the United States' claims have occurred in this District.

THE BRESLUBE PENN SITE

5. The Breslube Penn Site is located at 84 Montour Road, in Moon Township, Allegheny County, Pennsylvania. The Site is surrounded by a steep hillside to the north and west and is bordered by Montour Run, a freshwater stream used for fishing, to the east and south.

6. A variety of industrial and commercial wastes were treated, stored, and/or disposed of at the Site from 1974 through the early 1990s ("times relevant to this Complaint").

THE DEFENDANT

7. Defendant is a "person" within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21).

8. Defendant is a Maryland corporation organized in 2001.

9. Wastes from Defendant's facility (or facilities) and/or operations were treated and/or disposed of at the Site at times relevant to the complaint.

10. Some of Defendant's wastes that were treated and/or disposed of at the Site contained hazardous substances.

GENERAL ALLEGATIONS

11. In 1977, Wiseman Oil was incorporated in Pennsylvania. Shortly thereafter Wiseman Oil constructed a used oil/sludge reprocessing facility on the Site.
12. From 1978 through 1982 Wiseman Oil received and reprocessed a variety of waste oils, sludges, solvents, tank bottoms and other waste materials at the Site. These various wastes came from numerous sources throughout Pennsylvania, Ohio, New York, Michigan, Tennessee, West Virginia, Virginia, and other States. Further, prior to the recycling period, "Wiseman Road Oil" received and stored waste oils on the Site, for use in its business.
13. The "disposal" and "treatment" of "hazardous substances," as those terms are defined respectively at 42 U.S.C. § 9601(29), 42 U.S.C. §§ 6903(3), 6903(34), and 42 U.S.C. § 9601(14) occurred at the Site while under Wiseman Oil's operation and control.
14. In 1981, Wiseman Oil Co. filed a petition in the Bankruptcy Court for the Western District of Pennsylvania, Case No. 81-3367, following Equibank's foreclosure on a mortgage.
15. In October 29, 1982, Breslube Penn, Inc. purchased the real property on which the Site is located from Joseph and Ruth Wiseman.
16. When Breslube Penn acquired the Site, significant volumes of waste containing hazardous substances were stockpiled or stored onsite from the Wiseman Oil operations.
17. Breslube Penn reopened the former Wiseman Oil waste oil/sludge reprocessing facility shortly after acquiring the property.
18. Breslube Penn operated the waste oil/sludge reprocessing facility until sometime in late 1985 or early 1986 when the Pennsylvania Department of Environmental Resources

("PADER") declined to renew the National Pollution Discharge Elimination System ("NPDES") permit which had allowed Breslube Penn (and previously Wiseman Oil) to discharge wastewaters from their reprocessing facility into Montour Run.

19. In November 1987, Breslube Penn entered into a Consent Order with PADER pursuant to which it drained numerous storage tanks on Site, shipped the contents off-site, installed ground water monitoring wells, and consolidated sludges, waste filtering agent, and contaminated soils into a large pile. However, these actions did not comply with all of the requirements of the order.

20. In 1993, EPA initiated a Site assessment at PADER's request. EPA inspections revealed that numerous hazardous substances have been released at the Site, including but not limited to metals such as arsenic, chromium, copper, mercury, nickel, lead and zinc, various volatile organic compounds such as 1,1,1,-trichloroethane, cis-1,3-dichloroethene, as well as polychlorinated biphenols ("PCBs") and polyaromatic hydrocarbons ("PAHs").

21. After reviewing sampling data from the Site, EPA concluded that "an imminent and substantial threat to human health and the environment" existed at the Site, and in November 1993 it obtained funding to perform a removal action at the Site.

22. After issuing a "Notice of Liability and Offer to Negotiate" letter to Breslube Penn in November 1993, on December 22, 1993 Breslube Penn signed an Administrative Order by Consent (an "AOC") to perform the removal action, but later failed to submit a sufficient response action plan for the Site.

23. In March 1994 EPA decided to perform a fund-lead removal action at the Site.

24. The removal action occurred between June and October 1994. Over 6,000 tons of contaminated soil and sludge were removed from the Site during the removal action.

25. After the conclusion of the removal action, EPA recommended the Site for inclusion on the National Priorities List ("NPL"), and it was listed on the NPL on June 19, 1996.

26. In September 1998, a group of defendants (the "Work Group") notified the United States of its desire to perform the Remedial Investigation and Feasibility Study ("RI/FS").

27. On February 4, 2000, EPA and the Work Group entered into an AOC, pursuant to which the Work Group agreed to perform the RI/FS.

28. The Work Group submitted to EPA a final Remedial Investigation Report on August 31, 2005, and a revised draft Feasibility Study Report on September 1, 2005. The final RI/FS was submitted on December 6, 2006, with an addendum issued February 20, 2007.

29. EPA expects to issue a Record of Decision selecting the remedy to be implemented at the Site by August 31, 2007.

30. The Work Group currently includes the following named defendants to the related action, United States v. Allegheny Ludlum Corp., et al. (C.A. No. 97-1863, W.D. Pa): Exxon-Mobil Corporation, Exxon-Mobil Oil Corporation, CBS Corporation, Hussey Copper Corporation, Hussey Copper Ltd., United States Steel Corporation, United States Steel, LLC, Ford Motor Company and General Motors Corporation.

31. EPA and the United States Department of Justice ("DOJ") have incurred past response and enforcement costs in excess of \$4 million and anticipate future response costs in excess of \$13 million.

CLAIM FOR RELIEF FOR RECOVERY OF RESPONSE COSTS

32. The allegations contained in the preceding paragraphs are realleged and incorporated herein by reference.

33. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(3) provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject to the defenses set forth in subsection (b) of this section –

* * * * *

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances ...

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for–

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study Carried out under section 9604(I) of this title.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (I) the date payment of

a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. . . .

34. CERCLA defines “person” to include, inter alia, a “corporation.” 42 U.S.C. § 9601(21).

35. Defendant falls within the class of persons described in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

36. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

37. The “disposal” and/or “treatment” of “hazardous substances” (as those terms are defined respectively at 42 U.S.C. § 9601(29), 42 U.S.C. § 9603(3), 42 U.S.C. § 9603(34), and 42 U.S.C. § 9601(14)), occurred at the Site during the Wiseman Oil and the Breslube Penn eras.

38. There have been releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or the threat of releases of hazardous substances into the environment at or from the Breslube Penn Site.

39. The United States has taken “response” actions at the Breslube Penn Site, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and has incurred costs in connection with taking those “response” actions.

40. The costs incurred by the United States in connection with the Breslube Penn Site are not inconsistent with the National Contingency Plan, promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300 et seq.

41. The unreimbursed response costs incurred to date by the United States in

connection with the Breslube Penn Site exceed \$4,000,000.

42. The United States will continue to incur response costs in connection with the Site.

43. Defendant is jointly and severally liable to the United States for all unreimbursed response costs incurred, and to be incurred, by the United States in connection with the Site, including enforcement costs and prejudgment interest on such costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

1. Enter judgment in favor of the United States and against defendant for all unreimbursed response costs incurred by the United States in connection with the Site, and prejudgment interest on those costs;
2. Enter a declaratory judgment on liability that will be binding in actions to recover further response costs incurred by the United States in connection with the Site; and
3. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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THE
OFFICE OF THE
ATTORNEY GENERAL
STATE OF NEW YORK
ALBANY, N. Y.
JANUARY 10, 1901

TO THE
COMMISSIONERS OF THE
LAND OFFICE
ALBANY, N. Y.

DEAR SIR:
I have the honor to acknowledge
the receipt of your letter of the
10th inst. and in reply to inform
you that the same has been
forwarded to the proper
authorities for their consideration.